IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2291 OF 2005
IN
SUIT NO.654 OF 2000

S.B.I. Mutual Fund .. ..Plaintiff
Versus
Infosys Technologies Ltd. & Ors. ..Defendants

WITH

CHAMBER SUMMONS NO.119 OF 2005
IN
SUIT NO.654 OF 2000

SBI Mutual Fund .. ..Plaintiff
Versus
Infosys Technologies Ltd. & Ors. ..Defendants
And
Stock Holding Corporation of India Ltd....Applicants

WITH

CHAMBER SUMMONS NO.1487 OF 2005
IN
SUIT NO.654 OF 2000

S.B.I. Mutual Fund ... ..Plaintiff
Versus
Infosys Technologies Ltd. & Ors. ..Defendants
And
The New India Assurance Co.ltd. .. ..Applicants

Mr.Amit Bajpai i/b A. Ankhad for plaintiffs

Mr.Shaym Diwan, Sr. Counsel with Ms Madhvi Diwan i/b M/s.Thakore Jariwala & Associates for deft.no.3

Mr.G.R.Joshi i/b Naresh J.Ratnani for applicants in Ch.No.119/05.

Ms. Swaapnila Rane for applicants in Chm.No.1487 of 2005

CORAM : S.J.VAZIFDAR, J.

DATE : 28TH FEBRUARY, 2006

P.C.

1. The Notice of Motion NO.2291 of 2005 has been taken out by the Defendant no.3 for dismissal of the suit under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code.

2. Chamber Summons No.119 of 2005 has been taken out by the Stock Holding Corporation of India Ltd. (for short SHCIL) seeking to be impleaded as Plaintiff No.2 and for carrying out certain consequential amendments.

3. Chamber Summons No.1487 of 2005 has been taken out by the New India Assurance Co. Ltd. seeking to be impleaded as a Plaintiff and for consequential amendments.

4. The suit was filed for a declaration that the plaintiffs are the owners of the shares of 1st

defendants. The plaintiffs have also sought a declaration that the said shares be transferred in their name and that they are entitled to all the rights and benefits attached to the same. They have also sought a declaration that defendant nos.1 and 2 have no right to issue duplicate shares. The plaintiffs have challenged the action of defendant no.2 in parting with the original share certificates.

5. Defendant no.2 is Karvy Consultants Ltd.. Defendant no.3 is one Arun Parasmal Nahar. Defendant no.4 is Krishna Texport & Capital Markets Ltd.

6. The plaintiffs claimed that they had purchased the said shares. It appears that the said shares were not registered in their names due to certain objections taken by the defendant no.1, who returned the original transfer form to the plaintiffs.

7. Mr. Diwan, the learned senior counsel appearing for defendant no.3, submitted that the suit is liable to be dismissed on the ground that the plaintiffs have suppressed various facts and documents. The plaintiffs initiated proceedings against SHCIL in which a consent

award was passed, on the basis whereof SHCIL now seeks to be impleaded as a party. According to Mr. Diwan, the plaintiffs claim in the arbitration is fully satisfied. In addition thereto, he submitted that the basis of the plaintiffs claim against SHCIL is contrary to its stand in this suit. The substratum of the suit has ceased so exist and the suit ought therefore be dismissed. I am not inclined to agree.

8. There are questions which must await a trial. Even assuming that the stand before the arbitrator was different it would not ipso facto warrant a dismissal of the suit. This would depend upon the totality of circumstances. The Notice of Motion is therefore liable to be dismissed.

9. As far as Chamber Summons No.119 of 2005 is concerned, I think it ought to be allowed. The Application is taken out pursuant to and in view of the consent award in the matter of arbitration between the plaintiffs and SHCIL. The dispute between the plaintiffs and SHCIL was settled in terms of this award. One of the term was required SHCIL to pay certain amounts to the plaintiffs. Clause 5 of the consent

award required SHCIL to take steps to implead themselves as the plaintiff in the present suit. In these circumstances, it is necessary that SHCIL be added as a party plaintiff in the suit.

10. As far as Chamber Summons No.1487 of 2005 is concerned, I am of the opinion that The New India Assurance Co. Ltd. is also entitled to be impleaded as a co-plaintiff. It appears that SHCIL had obtained a sub-contingency policy for covering their operation risk undertaken during the course of the transaction. The New India Assurance Co. Ltd. paid to the SHCIL under the policy a sum of Rs.76,30,500/= in full and final settlement.

11. Notice of Motion No.2291 of 2005 is dismissed with a clarification that all the rights and contentions are kept open at the final hearing of the suit.

12. Chamber Summons Nos.119 of 2005 and 1487 of 2005 also made absolute in terms of prayer clause (a). Amendment to be carried out within eight weeks from today.